

AGREEMENT FOR ENGINEERING SERVICES

E. of MHR Infrastructure Improvements - Public Involvement Plan
Johnston City Project No. _____

This Agreement is made and entered into this _____ day of April, 2012 by and between the City of Johnston, a municipal corporation, hereinafter referred to as "City," and FOTH INFRASTRUCTURE AND ENVIRONMENT, LLC., (Fed. I.D. #20-5814224), a CONSULTING ENGINEERING corporation, hereinafter referred to as "Engineer," as follows:

THE CITY HEREBY AGREES TO RETAIN THE ENGINEER, AND ENGINEER HEREBY AGREES TO PERFORM THE FOLLOWING WORK, PERSONAL SERVICES, AND/OR FURNISH THE NECESSARY EQUIPMENT, SUPPLIES, OR MATERIALS GENERALLY DESCRIBED AS:

THE EXECUTION OF A PUBLIC INVOLVEMENT PLAN INTENDED TO IMPLEMENT A PUBLIC INVOLVEMENT PROCESS FOR THE PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE NEIGHBORHOOD KNOWN AS "EAST OF MERLE HAY ROAD" IN THE CITY OF JOHNSTON. THE PLAN INCLUDES STEERING COMMITTEE MEETINGS, WORKSHOPS, AND STAKEHOLDER MEETINGS ALONG WITH OTHER TASKS TO SUPPORT THE ON-GOING PUBLIC INPUT PROCESS.

1. SCOPE OF SERVICES.

Services provided under this agreement shall be as further described in Attachment A, Scope of Services.

2. SCHEDULE.

The schedule of the work to be performed shall conform to the Schedule set forth in Attachment B. Any deviations from the Schedule shall be approved by the authorized City representative.

3. COMPENSATION.

A. In consideration of the services, work, equipment, supplies, or materials provided herein, the City agrees to pay the Engineer the following sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment C.

I.	<u>Basic Services of the Engineer</u>	
	Task A – Public Involvement Plan	\$ 85,500.00

B. The Engineer shall invoice the City monthly for services, any reimbursable expenses, and any approved amendments to this agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Engineer's submission of final deliverables in accordance with the Scope of Services.

C. In consideration of said compensation payments, the Engineer agrees to perform all services, work, and/or provide all materials, supplies, and equipment, and to carry out the provisions of this agreement in a good and workmanlike manner to the satisfaction of the City. If the performance of this agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Engineer agrees to pay for the same in full; and at the time of payment by the City, to certify in writing to the City that said payments have been so made.

4. INSURANCE.

- A. Engineer understands and agrees that Engineer shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Engineer shall provide insurance coverage for and on behalf of Engineer that will sufficiently protect Engineer, or Engineer's agents, employees, servants, or other personnel, in connection with the services or work which are to be provided by Engineer pursuant to this agreement, including protection from claims for bodily injury, death, property damage, and lost income. Engineer shall provide worker's compensation insurance coverage for Engineer and all Engineer personnel. Engineer shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.
 - B. The Engineer shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 each aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall state the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
 - C. The Engineer shall also provide evidence of automobile liability coverage in the limits of at least \$1,000,000 bodily injury and property damage combined. The evidence shall state the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
 - D. The Engineer shall provide evidence of errors and omissions insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of \$1,000,000 for claims arising out of the professional errors and omissions of the Engineer. The evidence shall state that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
5. NOTICE. Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of Johnston
Attn: Dave Cubit, Public Works Director
Address: 6400 NW Beaver Drive
P.O. Box 410
City, State: Johnston, IA 50131

FOR THE ENGINEER:

Name: Foth Infrastructure and Environment
Attn: Patrick P. Kueter, P.E.
Address: 8191 Birchwood Court, Suite L
City, State: Johnston, IA 50131

6. GENERAL COMPLIANCE. In the conduct of the services/work or the supplies, equipment, or materials contemplated hereunder, the Engineer shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Engineer must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.
7. STANDARD OF CARE. Services provided by the Engineer under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
8. INDEPENDENT CONTRACTOR. Engineer understands and agrees that the Engineer and Engineer's employees, agents, servants, or other personnel are not City employees. Engineer shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any

other form of compensation or benefit to Engineer or any of Engineer's employees, agents, servants, or other personnel performing the services or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither Engineer nor Engineer's employees, agents, servants, or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION. Engineer will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Engineer will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Engineer will cooperate with the City in using Engineer's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this agreement.
10. HOLD HARMLESS. Engineer agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Engineer is legally liable.
11. ASSIGNMENT. Engineer shall not assign or otherwise transfer this agreement or any right or obligations therein without first receiving prior written consent of the City.
12. APPROPRIATION OF FUNDS. The funds appropriated for this agreement are equal to or exceed the awarded contract amount. Performance of the City's obligations under this Agreement are expressly subject to appropriations of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this agreement, or appropriated funds may not be expended due to City spending limitations, then the City may terminate this Agreement without further compensation to the Engineer.
13. AUTHORIZED AMENDMENTS TO AGREEMENT.
 - A. The Engineer and the City agree and acknowledge as a part of this agreement, that no amendments to this agreement, or other form or order or directive, may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the agreement to exceed the amount appropriated for this agreement as listed above, unless the Engineer has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made.
 - B. The Engineer and the City further agree and acknowledge as a part of this agreement that no agreement amendments, or other form or order or directive which requires additional compensable work to be performed under this agreement, shall be issued by the city unless funds are available to pay such additional costs, and the Engineer shall not be entitled to any additional compensation for any additional compensable work performed under this agreement, and expressly waives any rights to additional compensation, whether by law or equity, unless prior to commencing the additional work, the Engineer was given a written amendment describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which amendment was signed by the authorized City representative. It is the Engineer's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment to this agreement.
14. OWNERSHIP OF ENGINEERING DOCUMENTS. All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; and a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Engineer. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so.

15. **INTERPRETATION.** No amendment or modification of this agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the agreement. The laws of the State of Iowa shall govern this agreement. This is a completely integrated agreement and contains the entire agreement of the parties, and any prior written or oral agreements which are different from the norms, conditions, and provisions of the agreement shall be of no effect and shall not be binding upon either party. Any judicial action under the terms of this agreement shall be exclusively in the District Court for Polk County, Iowa.
16. **COMPLIANCE WITH IMMIGRATION AND CONTROL ACT.** Engineer certifies that Engineer has complied with the United States Immigration and Control Act of 1986. All persons employed by Engineer for performance of this agreement have completed and signed Form I-9 verifying their identities and authorization for employment.
17. **SOLICITATION AND PERFORMANCE.**
 - A. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that the Engineer has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
 - B. The Engineer shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.
18. **SUSPENSION AND TERMINATION OF AGREEMENT.**
 - A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Engineer, and shall be effective as of the date established in the suspension notice. Payment for Engineer's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Engineer.
 - B. Upon ten (10) days written notice to the Engineer, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Engineer make it impossible or against the City's interest to complete the Agreement. In such case, the Engineer shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.
 - C. The City may also terminate this Agreement at any time if it is found that the Engineer has violated any term or condition of this Agreement, or that Engineer has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Engineer, the City may give ten (10) days written notice to the Engineer of the City's intent to terminate the Agreement. Engineer shall have ten (10) days from notification to remedy the conditions constituting the default.
 - D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Engineer had the Agreement not been terminated and work completed in accordance with contract documents.
19. **TAXES.** The Engineer shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this agreement. The Engineer shall execute and deliver and shall cause his subcontractors to execute and deliver to the City, certificates as required, to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and, therefore, not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY. If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.
 21. MISCELLANEOUS HEADINGS. Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.
 22. FURTHER ASSURANCES. Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.
 23. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

ENGINEER
FOTH INFRASTRUCTURE AND ENVIRONMENT **CITY OF JOHNSTON**
(Corporate Name)

By: _____ By: _____
Name: Patrick P. Kueter, P.E. Name: Paula Dierenfeld, Mayor
Title: Senior Project Manager

WITNESS: _____ **ATTEST:** _____

By: _____
Name: Douglas J. Ernst, P.E.
Title: Senior Project Manager

By: _____
Name: _____
Title: _____

ATTACHMENT 1 **SCOPE OF SERVICES**

CITY OF JOHNSTON, IOWA EAST OF MERLE HAY ROAD INFRASTRUCTURE IMPROVEMENTS

PUBLIC INVOLVEMENT PLAN

1. PURPOSE

This Public Involvement Plan is intended to implement a public involvement process for the public infrastructure improvements in the neighborhood known as "East of Merle Hay Road" in the City of Johnston. The City of Johnston should expect to encounter a variety of stakeholder views and opinions over the course of the process. The purpose of this Plan is to incorporate those diverse stakeholder perspectives into the decision making process, enabling the City to make more informed decisions and improve quality through collaborative efforts.

2. PUBLIC INVOLVEMENT GOALS AND OBJECTIVES

The effectiveness of this Public Involvement Plan depends upon its success in meeting the expectations of the public. This process ensures that the public will be kept informed of activities and given meaningful opportunities to participate in the development and review of public plans and policy.

Goal: Establish a Plan that involves city staff and officials, residents, and stakeholders in the decision making process for planned public infrastructure improvements within the neighborhood.

Objective 1: Provide the public with timely notice and reasonable access to information about planned infrastructure improvements and processes.

Objective 2: Create opportunities for all segments of the public to become informed about issues and plans under consideration.

Objective 3: Collaborate with the public to identify concerns, develop alternatives and evaluate policies to address the concerns.

Objective 4: Listen and respond to suggestions made by the public. Public input will be incorporated into the final plans.

Objective 5: Foster candid information exchanges and ongoing two-way communication using a variety of media.

3. ON-GOING PUBLIC INVOLVEMENT EFFORTS

Public involvement efforts are proposed to take place throughout the infrastructure improvement design process. The on-going efforts are informative in nature, as opposed to active public involvement sessions. Ongoing public involvement efforts will inform the public about upcoming sessions and update the public regarding project progress. Specific ongoing public involvement efforts include:

Project Information at the City Hall: Agendas, public notices, project plans, schedules, and other materials will be available for review at City Hall. Foth will provide electronic information as necessary for printing and posting by the City.

Website Postings: Updates regarding the project progress and upcoming public involvement sessions will be posted and maintained on the City's website. These postings will be updated as significant progress is made on the project and when new opportunities for public involvement arise. All project data and plans, schedules, and other applicable materials will be posted on the website. The website posting will be a

convenient and updated source of information for the general public. Foth will provide electronic materials to the City during the process for posting.

Newspaper: At the discretion of the City, information will be published throughout the project. It will inform the public about upcoming meetings and project progress. The newspaper will also serve as a source of information for those property owners that do not visit the City's website on a regular basis or do not have internet access. Foth will provide electronic information as necessary for publishing by the City.

4. CITY COORDINATION

Throughout the process, Foth will coordinate the public involvement efforts with the Public Works Committee. The majority of coordination will be in the form of email and telephone. However, Foth will meet with the committee up to two (2) times to discuss project design parameters. These meetings will be attended by four (4) Foth staff personnel.

Design parameters may include storm water constraints or limits on amenities such as the number of intersections eligible for decorative paving, a limit on the number of decorative street light fixtures, etc. Once established, these parameters will be used throughout the process to guide public input on desired street configurations.

5. FAQ DEVELOPMENT

Working closely with the Public Works Committee, Foth will develop a Frequently Asked Questions (FAQ) sheet for the project. The steering committee will provide additional review of the FAQ before public dissemination. The purpose of the FAQ will be to provide detailed information about the project including: background, need, process, contacts, opportunities for input, and cost considerations. Foth will provide an electronic version of the FAQ and copies will be printed by the City.

6. STEERING COMMITTEE MEETINGS

The City will establish a steering committee comprised of a variety of stakeholders within the planning area. The purpose of this committee will be to guide the public input and design process. The steering committee will generally meet after public workshops (with the exception of the first meeting) to assist with analysis of public input and validate the development of parameters and options. Foth will meet with the steering committee up to five (5) times and will be attended by four (4) Foth staff personnel.

7. STAKEHOLDER INTERVIEWS

Foth will meet individually with neighborhood stakeholders as identified by the City. Stakeholders meetings will coincide with dates scheduled for public meetings for efficiency. The purpose of these meetings will be to discuss the issues, considerations, and design options one-on-one with key individuals. Input gathered during the meetings will be kept confidential when necessary and will not have greater influence over the project than input received through other means.

8. PUBLIC WORKSHOPS

Public workshops will be used to gather input from the public to assist in the infrastructure improvement design process. The process includes four (4) public meetings to discuss the infrastructure design and will be facilitated by Foth. The City will organize all meeting locations including advertising. The purpose of the meetings is to:

- Discuss the project parameters, goals, phasing, etc.;
- Inform the public of various means of input throughout the process;
- Inform the public of various infrastructure options;
- Allow opportunities for the public to have questions addressed; and
- Allow opportunities for the public to directly influence conceptual designs.

After an initial introduction at each meeting, Foth will facilitate small group break-out discussions organized by neighborhood subareas, and then later reconvene as a large group to summarize and share results. This allows more candid and meaningful input from a greater number of participants than with one large group. The public input process and all design alternatives will be summarized in a report document.

Workshop #1 will serve as a project kick-off meeting and will focus on project background, need, parameters, and opportunities for input. Foth will also conduct a **visual preference survey** to explore the public's preference for specific infrastructure design elements within the planning area. We will show various images and ask the public to score each image. Results from the survey will be shared and discussed at Workshop #2 as a precursor to design alternatives.

Workshop #2 will begin with a recap of the previous meeting and the results of the visual preference survey will be discussed. The purpose of the discussion is to explore the public's general likes or dislikes of certain elements within the images. Following this, neighborhood subgroups will discuss conceptual design alternatives. Large aerial photographs with property and right-of-way lines will be used as a base map onto which participants can add infrastructure and decorative design elements through a combination of pre-cut out pieces and colored markers. Foth staff will work individually with each neighborhood group during the process. To wrap up the meeting, design alternatives and connectivity between subareas will be shared and discussed with the larger group.

Based on the results of the workshop and further discussion with the steering committee, Foth will draw the preliminary design alternatives for review Workshop #3. In addition, Foth will prepare a "before" and "after" image of each street showcasing the design elements.

Workshop #3 will focus on review of the preliminary design alternatives as drawn by Foth and the conceptual "before" and "after" images of each street. Neighborhood subgroups will discuss and refine the drawings and reconvene as a larger group to discuss direction, progress, and consensus.

Based on the results of the workshop and further discussion with the steering committee, Foth will further refine the alternatives.

Workshop #4 is optional depending on the level of consensus after Workshop #3. The purpose of Workshop #4 is to further refine concepts and alternatives if required to build consensus.

9. PUBLIC OPEN HOUSE

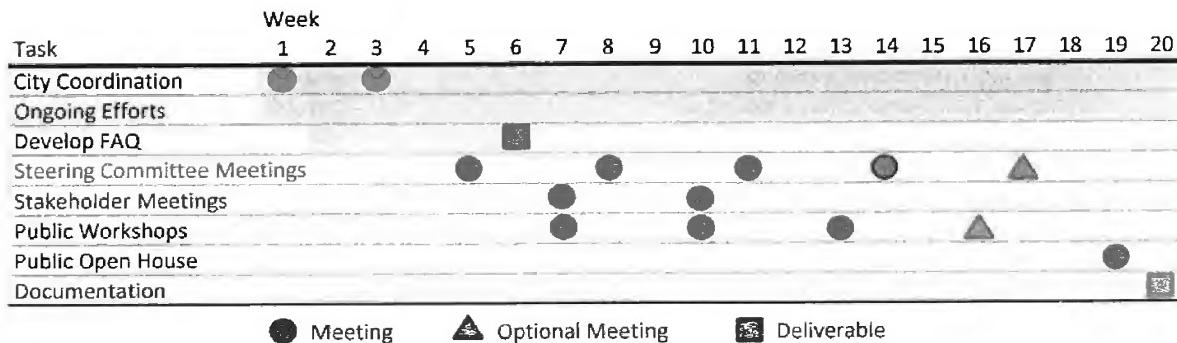
Once general consensus is established for infrastructure and decorative design elements for the planning area, Foth will facilitate a public open house. The open house will begin with a brief presentation summarizing the project and the process. Following this, the public will be invited to view and comment on the conceptual designs in a relaxed, open house format. This will serve as the final public meeting in the process.

10. DOCUMENTATION

Foth will document the public input process, design iterations, and selected design alternatives. The documentation will include any parameters and guidelines established as part of the public conceptual design process. Foth will provide the City an electronic version of the documentation for printing.

11. TIMELINE

The following timeline provides a summary of the schedule for public involvement sessions. Week # 1 will begin as soon as the City provides a Notice to Proceed. As work proceeds, the scheduled dates may be adjusted to reflect progress on the project. Foth will continue to work closely with City staff throughout the process as required.



ADDITIONAL SERVICES NOT INCLUDED IN THIS CONTRACT

Additional Services not included as part of this Scope. If authorized, under a supplemental agreement, the Engineer shall furnish or obtain from others the following services:

- 1.) Appraisals
- 2.) Review Appraisals
- 3.) Right-of-Way Acquisition Services
- 4.) Report of Record Ownership and Liens (Title Searches)
- 5.) Eminent Domain proceedings
- 6.) Preparation of Environmental Evaluation and Documentation
- 7.) Historical and Archeological Preservation Investigations (Section 106)
- 8.) Phase II Cultural Resource Survey
- 9.) Contaminated Soils Investigations
- 10.)Road Design
- 11.)Traffic Signal Design
- 12.)Bridge/Structural Design
- 13.)Lighting Design
- 14.)Streetscape Design
- 15.)Subsurface Utility Investigations
- 16.)Construction Period Testing Services
- 17.)HEC-RAS Water Surface Modeling

ATTACHMENT 2
PROJECT SCHEDULE

The time of completion of the design and engineering services under this Agreement shall be as follows:

- I. Basic Services of the Engineer
- A. Contract Approval
 - B. City Coordination
 - C. Steering Committee Meetings
 - D. Workshops/Stakeholder Meetings
 - E. Public Open House
 - F. Documentation

April 16, 2012
April - May, 2012
June - August 2012
June - August 2012
September 2012
October 2012

ATTACHMENT 3
SCHEDULE OF FEES

FOTH INFRASTRUCTURE AND ENVIRONMENT, L.L.C.
2012 STANDARD HOURLY RATE SCHEDULE

CLASSIFICATION HOURLY RATE

Project Director	\$157.00
Project Manager III	\$150.00
Project Manager II	\$141.00
Project Manager I	\$130.00
Project Scientist	\$138.00
Project Advisor	\$126.00
Lead Engineer	\$140.00
Project Engineer III	\$129.00
Project Engineer II	\$120.00
Project Engineer I	\$108.00
Staff Engineer III	\$106.00
Staff Engineer II	\$101.00
Staff Engineer I	\$95.00
Lead Technician	\$105.00
Engineering Technician III	\$101.00
Engineering Technician II	\$98.00
Engineering Technician I	\$87.00
CAD Technician	\$86.00
Construction Manager	\$123.00
Lead Field Technician	\$100.00
Field Technician III	\$88.00
Field Technician II	\$74.00
Field Technician I	\$61.00
Land Surveyor	\$106.00
Administrative Assistant	\$63.00

REIMBURSABLE EXPENSES

1. All materials and supplies used in the performance of work on this project will be billed at cost plus 10%.
2. Auto mileage will be reimbursed per the standard mileage reimbursement established by the Internal Revenue Service. Service vehicle mileage will be reimbursed on the basis of \$0.72 per mile.
3. Charges for outside services such as soils and materials testing, fiscal, legal will be billed at their invoice cost plus 15%.
4. All other direct expenses will be invoiced at cost plus 10%.

ADJUSTMENTS TO FEE SCHEDULE

1. Fee schedule effective January 1, 2012. Rates subject to change annually on January 1.

